

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In Re:

**RICHARD DOUGLAS CULLINAN,

Debtor.**

CHAPTER 11

CASE NO. 22-51326-WLH

**COASTAL STATES BANK,

Plaintiff,**

v.

**RICHARD DOUGLAS CULLINAN,
CHRISTINA M. CULLINAN, FIFTH
THIRD BANK, NATIONAL
ASSOCIATION, AND CREDIBILITY
CAPITAL, INC.,**

Defendants.

**ADVERSARY PROCEEDING
NO. 22-05078-WLH**

**RESPONSE TO PLAINTIFF’S STATEMENT OF MATERIAL FACTS AND MOTION
FOR SUMMARY JUDGMENT**

Defendants Richard D. Cullinan and Christina M. Cullinan (the “**Defendants**”), by and through their undersigned counsel, and file their Response to Plaintiff’s Statement of Material Facts and Motion for Summary Judgment, respectfully showing the Court as follows.

Statement of Undisputed Material Facts Response

Defendants respond only that paragraph 10 is not accurate.

Plaintiff’s paragraph 10 of its Statement of Undisputed Material Facts provides as follows:

“On February 11, 2022, Credibility Capital, Inc. recorded a Writ of Fieri Facias (the “Credibility Lien”) against Mr. Cullinan, recorded at Lien Book 5213, Page 486, Fulton County, Georgia records. See [Doc. 1] at p. 31; [Doc. 9] at p. 3, ¶ 15.”

No search of “Cullinan” or “Cullinan, Richard” on the GSCCCA.Org public records search reveals a lien against Mr. Cullinan. See Exhibit “A” attached hereto. Instead, one would have to know the book and page number of the Writ of Fiera Facias filed by Credibility Capital, LLC to find it.

RESPONSE TO PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT

Defendants restate and reincorporate their original brief in support of their motion for summary judgment in response to Plaintiff’s Motion for Summary Judgment and request that the Court grant Defendant’s requested relief.

Plaintiff points to no case law that stands for the proposition that the existence of a second consensual lien and a judgment lien filed against an owner of real property puts a hypothetical bonafide purchaser on inquiry notice that the first lienholder’s cancellation would be ineffective. The Plaintiffs argument that *Kelley v. Ocwen Loan Servicing, LLC (In re Bowers)*, 595 B.R. 869 (Bankr. M.D. Ga. 2018); and *AFB&T v. Custom Contractors and Assocs., Inc. (In re Custom Contractors and Assocs., Inc.)*, No. 09-01002-SDB, [Doc. 29] (Bankr. S.D. Ga. Dec. 3, 2009) are distinguishable is without merit, as the distinction is one that makes no difference to the Court’s analysis in this case. To follow this line of reasoning would be completely contrary to Georgia law and the cases cited by Defendants in their original brief.

In support of their position, Plaintiff cites to *Henderson v. Suntrust Bank Nw. Ga. (in Re Henderson)*, 284 B.R. 515, 519 (Bankr. N.D. Ga. 2002). That case is readily distinguishable from reading Plaintiff’s own summation of its holding. In that case, the lender that filed the mistaken release had also filed a modification of the loan and an affidavit regarding the mistaken release prior to the petition date that would have put a hypothetical bonafide purchase on notice because

documents regarding the cancellation were actually filed in the real estate records. *Id.* at 516. Here, Plaintiff asks the Court to make a giant leap of logic to extend this inquiry notice to a second priority security deed and judgment liens that in no way reference or are related to the first mortgage that was cancelled in this case. For these reasons, Defendants request the Court deny Plaintiff summary judgment and grant Defendant summary judgment on all counts.

Dated: October 12, 2022

ROUNTREE LEITMAN KLEIN & GEER, LLC

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Georgia Superior Court Clerks' Cooperative Authority

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Page: **486** in **FULTON County**
County good from **1/1/2004** through **10/9/2022**
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County	Instrument Type	Date Filed	Time	Book	Page
FULTON	FIFA	2/11/2022	10:28 AM	5213	486

Description
CASE NUMBER 20A824784

Sec/GMD	District	Land Lot	Subdivision	Unit	Block	Lot	Comment
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Direct Party (Debtor)
MIDTOWN RESTAURANT ACQUISITION LLC

Reverse Party (Claimant)
CREDIBILITY CAPITAL INC

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